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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALAN ANGELES, et al.

12 Plaintiffs,

13 vs.

14 JEH C. JOHNSON, Secretary of
15 Homeland Security, et al.

16 Defendants.¹

Case No.: 13-cv-00008-BTM-RBB

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19 **ORDER GRANTING IN PART AND**
20 **DENYING IN PART MOTION TO**
21 **DISMISS**

22 Plaintiffs Alan Angeles and Nataly Angeles are Mexican citizens
23 residing within this Court's jurisdiction (Am. Compl. ¶ 1).² They have both
24 filed applications for adjustment of status with United States Citizenship
25 and Immigration Services ("USCIS"), which were denied (Am. Compl. ¶¶ 4-
26 11). Plaintiffs contend that Defendants' denial of their applications is

27 ¹ Pursuant to Federal Rule Civil Procedure ("Fed. R. Civ. P.") 25(d), the
28 Court substitutes Jeh C. Johnson and the other Defendants listed in
footnote 1 of Defendants' Reply to Plaintiffs' Opposition to Defendants'
Motion to Dismiss, for the Defendants listed in the Amended Complaint.

² Unless otherwise noted, all facts herein are taken from the Amended
Complaint (Doc. 10), and all "¶" citations are references to paragraphs of
the Amended Complaint ("Am. Compl.").

1 arbitrary, capricious, and unlawful, and seek a ruling from this Court that
 2 they are, in fact, eligible for adjustment of status as derivative beneficiaries
 3 of the Form I-130³ application filed by their grandfather on behalf of their
 4 father in 1977 pursuant to 8 U.S.C. § 1255(i) and § 1154(l) (Am. Compl. ¶¶
 5 29, 31). Defendants have moved to dismiss Plaintiffs' Amended Complaint
 6 for lack of jurisdiction and failure to state a claim. For the following
 7 reasons, Defendants' motion is **GRANTED** in part and **DENIED** in part.

8 9 I. BACKGROUND

10 Plaintiffs' grandfather, Luis Herrera Angeles, registered to immigrate
 11 to the United States under the then existing Western Hemisphere Program
 12 ("WHP") at the beginning of October, 1976 (Am. Compl. ¶ 14). Luis
 13 entered the United States as an immigrant on October 5, 1976 (*Id.* at ¶ 15).
 14 On January 1, 1977, the WHP ended and was replaced with a preference
 15 system (*Id.* at ¶ 16). On or about June 10, 1977, Luis filed a Form I-130 to
 16 allow Plaintiffs' father, Demetrio, to immigrate (*Id.* at ¶ 15).

17 On August 27, 1977, Luis's Form I-130 for Demetrio was approved
 18 and Demetrio was assigned to category "P2-2," the preference designation
 19 for an unmarried son or daughter of a lawful permanent resident under the
 20 preference system that replaced the WHP (Am. Compl. ¶ 18; Doc 13-2,
 21 Motion to Dismiss, Exhibit B). On February 15, 1978, Demetrio entered the
 22 United States as a lawful permanent resident (Am. Compl. ¶ 19). However,
 23 Demetrio's Immigrant Visa and Alien Registration form was not marked as
 24 "P2-2," but rather as "SA-1," the designation for individuals immigrating
 25 under the old WHP (Am. Comp. ¶ 19; Doc. 13-2, Motion to Dismiss, Exhibit
 26 C).

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 28 ³ Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa.

1 Plaintiff Alan Angeles filed a Form I-485 application to adjust his
 2 residency status on September 19, 2011. Plaintiff Nataly Angeles filed the
 3 same form application on May 24, 2012. Both applications sought
 4 adjustment of status as derivative beneficiaries of the Form I-130
 5 application filed by their grandfather, Luis, on behalf of their father,
 6 Demetrio. Defendants reviewed and denied these applications on May 31,
 7 2012 and September 10, 2012, respectively (Am. Compl. ¶¶ 4-5).
 8 Defendants' denials explained that Plaintiffs were ineligible because
 9 Demetrio had used his Form I-130 to immigrate, and thus the form was
 10 unavailable for Plaintiffs to use to adjust their status under either 8 U.S.C.
 11 §1255(i) or 8 U.S.C. §1154(1).

12 Plaintiffs filed the present action on January 2, 2013, and shortly
 13 thereafter Defendants sent notice to Plaintiffs that they would reopen their
 14 applications (Am. Compl. ¶¶ 7-8). On April 10, 2013, Defendants sent
 15 Plaintiffs notice of intent to deny the reopened application (Am. Compl. ¶
 16 9). Both notices stated that Plaintiffs were seeking to establish Western
 17 Hemisphere Priority Dates (*Id.*). Plaintiffs sent a timely response to
 18 Defendants, clarifying that they were not trying to establish Western
 19 Hemisphere Priority Dates, but were rather seeking benefits under 8 U.S.C.
 20 §1255(i) and 8 U.S.C. §1154(l) (Am. Compl. ¶ 10). On July 18, 2013,
 21 Defendants again denied Plaintiffs' I-485 applications for the same reason
 22 they had been previously denied (Doc. 13-2, Motion to Dismiss, Exhibit A).

23 24 **II. LEGAL STANDARD**

25 Fed. R. Civ. P. 12(b)(1) provides for dismissal of complaints where
 26 the court "lack[s] . . . subject-matter jurisdiction." Federal courts are courts
 27 of limited jurisdiction, possessing only that power authorized by Article III of
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1 the United States Constitution and statutes enacted by Congress pursuant
 2 thereto. See Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
 3 541(1986). Thus, “[f]ederal courts have no power to consider claims for
 4 which they lack subject-matter jurisdiction.” Wang ex rel. United States v.
 5 FMC Corp., 975 F.2d 1412, 1415 (9th Cir. 1992). “[T]he burden of
 6 establishing . . . [that a cause lies within this limited jurisdiction] rests upon
 7 the party asserting jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of
 8 America, 511 U.S. 375, 377 (1994).

9 Fed. R. Civ. P. 12(b)(6) provides for dismissal of complaints which
 10 “fail[] to state a claim upon which relief can be granted.” In other words,
 11 “[a] Rule 12(b)(6) motion tests the legal sufficiency of a claim.” Navarro v.
 12 Block, 250 F.3d 729, 732 (9th Cir. 2001). When reviewing a motion to
 13 dismiss, the allegations of material fact in plaintiff’s complaint are taken as
 14 true and construed in the light most favorable to the plaintiff. See Parks
 15 Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).
 16 However, “the tenet that a court must accept as true all of the allegations
 17 contained in a complaint is inapplicable to legal conclusions.” Iqbal v.
 18 Ashcroft, 556 U.S. 662, 678 (2009). Evidence outside the complaint should
 19 not be considered in ruling on a motion to dismiss for failure to state a
 20 claim. See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925
 21 (9th Cir. 2001). However, a document is not outside complaint, so as to
 22 require treatment of a motion to dismiss as one for summary judgment, “if
 23 the complaint specifically refers to the document and if its authenticity is not
 24 questioned.” Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). Lastly, a
 25 court should not dismiss an action for failure to state a claim unless it
 26 appears beyond doubt that the plaintiff can prove no set of facts to support
 27 a claim entitling him or her to relief. Conley v. Gibson, 355 U.S. 41, 45
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(1957); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (2001).

Although detailed factual allegations are not required, factual allegations “must be enough to raise a right to relief above the speculative level.” Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007).

III. DISCUSSION

Defendants assert that Plaintiffs’ Amended Complaint should be dismissed, both due to lack of subject matter jurisdiction and for failure to state a claim. The Court will consider each argument in turn.

A. Subject Matter Jurisdiction

Plaintiffs have invoked this Court’s jurisdiction pursuant to 28 U.S.C. § 1361, Mandamus Act; 28 U.S.C. § 1651, the All Writs Act; 28 U.S.C. § 2201, Declaratory Judgment Act; and 5 U.S.C. § 701 et seq., Administrative Procedures Act (“APA”), right of review.

Defendants argue that the Court lacks jurisdiction over Plaintiffs’ mandamus claim because Plaintiffs do not have a right to the relief they are seeking and other remedies will afford adequate relief. See 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”); Kerr v. U.S. Dist. Court for Northern Dist. of California, 426 U.S. 394, 402 (1976) (“The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.”); Heckler v. Ringer, 466 U.S. 602, 603-04 (1984) (“§ 1361 is intended to provide a remedy only if the plaintiff has exhausted all other avenues of relief and only if the defendant owes him a nondiscretionary duty.”).

1 Defendants also argue that the Court lacks jurisdiction over Plaintiffs'
2 all-writs claims because the All Writs Act is not an independent basis for
3 jurisdiction. See 28 U.S.C. § 1651 (“all courts established by Act of
4 Congress may issue all writs necessary or appropriate in aid of their
5 respective jurisdictions and agreeable to the usages and principles of
6 law.”); United States v. New York Tel. Co., 434 U.S. 159, 172 (1977)
7 (recognizing “the power of a federal court to issue . . . commands under the
8 All Writs Act as may be necessary or appropriate to effectuate and prevent
9 the frustration of orders it has previously issued *in its exercise of jurisdiction*
10 *otherwise obtained.*” (emphasis added)).

11 Plaintiffs do not oppose Defendants’ motion to dismiss regarding their
12 claims pursuant to the Mandamus Act and the All Writs Act. Therefore,
13 those claims are dismissed.

14 However, Defendants have not contested Plaintiffs’ remaining bases
15 of jurisdiction under the Declaratory Judgment Act and APA right of review.
16 28 U.S.C. § 2201 grants federal courts jurisdiction to “declare the rights and
17 other legal relations of any interested party seeking such declaration,
18 whether or not further relief is or could be sought.” In this case, Plaintiffs
19 are seeking a declaration of their right to adjustment of status. Additionally,
20 § 702 of the APA provides that “[a] person suffering [a] legal wrong
21 because of agency action, or adversely affected or aggrieved by agency
22 action within the meaning of a relevant statute, is entitled to judicial review
23 thereof,” and § 706 empowers the court to “hold unlawful and set aside
24 agency action, findings, and conclusions found to be . . . arbitrary,
25 capricious, an abuse of discretion, or otherwise not in accordance with
26 law.” Plaintiffs are asking this Court to review the Department of Homeland
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1 Security agency decision to deny them an adjustment of status, and are
2 entitled to such review under § 702.

3 Accordingly, the Court finds that it has subject matter jurisdiction to
4 consider Plaintiffs' claims on the basis of 28 U.S.C. § 2201 and 5 U.S.C. §
5 701 et seq.

7 **B. Failure to State a Claim**

8 8 U.S.C. § 1255(i)(1) provides that "an alien physically present in [the]
9 United States . . . who is the beneficiary (including a spouse or child of the
10 principal alien, if eligible to receive a visa under section 1153(d) of this title)
11 of . . . a petition⁴ for classification under section 1154 of this title that was
12 filed with the Attorney General on or before April 30, 2001 . . . may apply to
13 the Attorney General for the adjustment of his or her status to that of an
14 alien lawfully admitted for permanent residence." The parties disagree as
15 to whether Plaintiffs are beneficiaries of a valid petition for classification for
16 purposes of §1255(i)(1).

17 Plaintiffs contend that the Form I-130 submitted by their grandfather,
18 Luis, on behalf of their father, Demetrio, was approved but never used
19 because Demetrio's classification of admission on his Immigrant Visa and
20 Alien Registration was marked as "SA-1," a WHP designation that did not
21 require a Form I-130. Plaintiffs reason that, had Demetrio used the Form I-
22 130, his admission status would have been "P2-2," the category for a child
23 of a permanent resident under the WHP system. Plaintiffs contend they
24 are entitled to use Demetrio's approved but unused Form I-130 to qualify
25 for adjustment of their status. Defendants argue that, under the applicable
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27 ⁴ A relative alien petition can be based on Forms I-130, I-360, I-600, I-800.
28 Here at issue is a Form I-130.

1 law at the time, Demetrio could only gain admission to the United States
2 with a labor certification⁵ or a valid Form I-130, and because he lacked a
3 labor certificate, he must have used his Form I-130. Defendants emphasize
4 that Demetrio's immigrant visa includes an annotation in the labor
5 certification box showing that Demetrio was exempt with the words "I-130
6 attached" typewritten below – however, the Form I-130 is not included as
7 an attachment to the immigrant visa provided as Defendants' Exhibit C.

8 The pleadings and attachments thereto make several conflicting
9 factual assertions, resolution of which is necessary to answer the legal
10 question of whether Plaintiffs qualify for adjustment of status under 8
11 U.S.C. § 1255(i). First, the parties dispute whether or not Demetrio actually
12 used the Form I-130 that Luis filed on his behalf when completing the
13 immigration process, or instead immigrated by "following to join" his father
14 under the WHP after its amendment on January 1, 1977. Second, the
15 parties dispute the meaning of Demetrio's immigrant visa classification
16 under the SA-1 category, whether or not the Consular Officer at the
17 American Consulate in Tijuana, Mexico, correctly used that designation to
18 classify Demetrio, and consequently, whether that classification shows that
19 Demetrio was admitted under the WHP.

20 While the parties agree that the SA-1 designation was given to
21 individuals immigrating under the WHP, Plaintiffs take this designation as
22 proof that Demetrio immigrated under the WHP, without using the Form I-
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24 ⁵ The WHP operated on a "first-come, first served basis," with the only
25 restriction being that an alien entering the country to perform skilled or
26 unskilled labor was required to obtain a certification from the Secretary of
27 Labor indicating that his entry would not adversely affect the American
28 labor market. See 8 U.S.C. § 1101(a)(27)(A) (1965). Parents, spouses
and children of U.S. citizens and permanent residents were exempt from
this requirement.

1 130. Plaintiffs argue that had Demetrio immigrated as an unmarried child
2 of a permanent resident, i.e., under the Form I-130, the proper immigrant
3 visa designation at the time would have been a P2-2, offering evidence to
4 that effect. Plaintiffs do not believe that the SA-1 designation was a
5 mistake, given that it was made by a Consular Officer and later
6 independently inspected by an employee of the former Immigration and
7 Naturalization Service upon Demetrio's entry into the United States.
8 Plaintiffs also state that the SA-1 designation matches the "w/h" state/area
9 designation, also appearing on Demetrio's immigration visa, which Plaintiffs
10 contend is reasonably interpreted as "western/hemisphere." Plaintiffs
11 argue that had Demetrio been admitted under the Form I-130 instead of the
12 WHP, his state/area designation would have been his birth country,
13 Mexico.

14 Without explicitly stating so, Defendants appear to argue that the SA-
15 1 designation was a mistake, since such designation marks Demetrio as a
16 WHP recipient in his own right. Defendants argue that Demetrio could not
17 have immigrated under the WHP, as a child "following to join" his father per
18 8 U.S.C. 1101(A)(27) (1969), because his immigration occurred in February
19 of 1978, over one year after the WHP was amended to require a labor
20 certification even of close relatives who were "following to join" a WHP
21 immigrant. The evidence before the Court does not show Demetrio
22 possessing a labor certification at the time of his immigration. Thus,
23 according to Defendants, Demetrio must have immigrated under an
24 exemption, and specifically by using the Form I-130 as a way around the
25 labor certificate requirement. This conclusion, however, assumes facts not
26 in evidence.

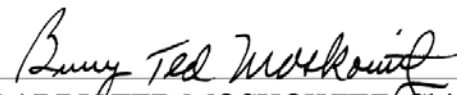
1 Because the standard on a motion to dismiss requires the Court to
2 construe allegations of material fact in a light most favorable to Plaintiffs,
3 and accept them as true, Plaintiffs' allegation that the Form I-130 remained
4 unused when Demetrio immigrated to the United States must be accepted
5 over Defendants' contrary allegations. See Parks Sch. of Bus., Inc. v.
6 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Consequently, Plaintiffs'
7 assertions that they filed the Form I-485 Applications for Adjustment of
8 Status, still qualify for adjustment on the basis of their father's unused Form
9 I-130, and that USCIS nevertheless denied their applications raises a
10 cognizable cause of action for judicial review of agency action under the
11 APA's arbitrary and capricious standard. Additionally, given the nature of
12 the allegations raised in the pleadings and exhibits thereto, it is premature
13 to determine whether Plaintiffs do or do not meet the legal qualifications for
14 adjustment of status under 8 U.S.C. § 1255(i). Such determination is best
15 suited for a motion for summary judgment with oral argument. Since this is
16 an APA action, the Court may be limited in its scope of review, that is,
17 whether substantial evidence supports the agency fact finding and whether
18 the decision was legally erroneous. See, e.g., Melkonian v. Ashcroft, 320
19 F.3d 1061, 1065 (9th Cir. 2003) (noting that an agency's factual findings
20 must be upheld "if supported by reasonable, substantial, and probative
21 evidence in the record"); Bonnichsen v. U.S., 367 F.3d 864, 880 n. 19 (9th
22 Cir. 2004) ("substantial evidence means such relevant evidence as a
23 reasonable mind might accept as adequate to support a conclusion")
24 (internal citation omitted).

IV. CONCLUSION

For the reasons discussed above, Defendants' motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**. Defendants' motion to dismiss for lack of subject matter jurisdiction is **GRANTED** as to Plaintiffs' claims for review under the Mandamus Act and All Writs Act, and is **DENIED** as to Plaintiffs' claims for review under the APA and Declaratory Judgment Act. Plaintiffs' claims for review under the Mandamus Act and All Writs Act are **DISMISSED**. Defendants' motion to dismiss for failure to state a claim is **DENIED**. Defendants shall file an answer to the Plaintiffs' Amended Complaint within 14 days of the entry of this order. The parties shall be accorded oral argument on a motion for summary judgment after the record for the court's consideration is complete. The parties shall appear before the Court for a status conference on Friday, October 17, 2014, at 3:30 p.m. in Courtroom 15B of the Annex.

IT IS SO ORDERED.

Dated: September 29, 2014


BARRY TED MOSKOWITZ, Chief Judge
United States District Court